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torts, and has given damages accordingly. *Preiser* v. *Weilandt*, 48 App. Div., 569; *Williams* v. *Underhill*, 63 App. Div., 224.

The soundness of this alleged distinction is not apparent. Whether a wrong be wilful or only negligent, the wrongdoer is liable for such injuries as flow naturally from his act. If damages for the results of mental distress caused by him are too remote in the one case, they must be so in the other. Moreover, if it is inconvenient to award damages for injuries resulting from shock or fright caused by a negligent act, it must be equally inconvenient when the act is wilful. The objection as to the encouragement of speculative litigation applies to both classes of cases. It may be that the disposition to give punitive damages has misled the courts and brought this confusion into their decisions.

REMOVAL OF CAUSES—PREJUDICE.—In *City of Terre Haute* v. *E. & T. H. R. Co. et al.*, 106 Fed., 545, C. C. D., Ind., Feb., 1901, the Circuit Court of the United States has recently departed from the view ordinarily accepted of the prejudice and local influence clause of the Removal Statute. It was held that diversity of citizenship, such as would give original jurisdiction to the Circuit Courts, must exist in order that a defendant might remove from the State courts.

Under the Removal Act of 1867, which was not affected by the Act of 1875, it was settled that all the plaintiffs must be citizens of different states from those of all the defendants, and that all parties, plaintiff or defendant, must join in the petition for removal. *Young* v. *Parker's Adms.*, 132 U. S., 267 (1889). In the Act of 1887 it was provided that, under certain conditions, in a "controversy between a citizen of the state in which the suit is brought and a citizen of another state, any defendant being such citizen of another state," might remove on the ground of prejudice and local influence. It was contended that, since the diversity of citizenship which is necessary to give the Circuit Court original jurisdiction was not specifically required, the phrase "being such citizen of another state" would be meaningless, unless some defendants might be of the same state as the plaintiff; *Whelan* v. *N. Y., L. E. & W. R. Co.*, 35 Fed., 849 (1888); also, that this provision for remanding the suit would have little application if there were diversity of citizenship. This view was generally adopted by the Circuit Courts. *Bonner* v. *Meikle*, 77 Fed., 485 (1896); *Jackson* v. *Pearson*, 60 Fed., 113 (1892). In *Fiske* v. *Henarie*, 142 U. S., 459 (1892), the question came before the Supreme Court, but the determination of it was expressly avoided, the decision passing off on the ground that the petition for removal was too late.

Inasmuch as under the Statute of 1867 diversity of citizenship was essential, *Young* v. *Parker's Adms.*, *supra*, and the language used in the Statute of 1887, as amended in 1888, had received a settled construction, *Anderson* v. *Bowers*, 43 Fed., 321 (1890), and as, further, it was the aim of the statute to cut down the number of cases removable to the Circuit Courts, it would seem that the prin-

cipal case is correct. Moreover, the Supreme Court in *In re Pennsylvania Co.*, 137 U. S., 451 (1890), decided that the $2,000 minimum required to give original jurisdiction to the Circuit Courts applied to cases of removal for prejudice; and it seems logically impossible to construe a part of the section granting original jurisdiction in connection with the prejudice clause and not the whole. *Cf. Jackson* v. *Pearson*, *supra.*

DIVORCE—EFFECT OF FOREIGN DECREE—ESTOPPEL.—Whether one who has procured a judgment for divorce may, as plaintiff, insist upon rights whose existence depends upon the continuance of the marital relation, in a state where the validity of his decree is not recognized, was the question raised in two recent cases before the New York Appellate Division. In each case the wife, compelled to leave her husband by reason of his abusive treatment, had gone to another state and there procured a divorce by constructive service of process; such decree being without force in New York, under the ruling in *People* v. *Baker*, 76 N. Y., 78. In one of the cases, *Starbuck* v. *Starbuck*, 64 App. Div., the plaintiff sued for dower and the Court in the Second Department declared that the fact that she had obtained an *ex parte* divorce in Massachusetts did not preclude her from asserting her claim as widow. In the other case, *In re Swales*, 60 App. Div., 599, which was tried in the Fourth Department, an opposite conclusion was reached and the petition of the wife for letters of administration upon the estate of her deceased husband was dismissed, the Court holding that, having sought and obtained a judgment for divorce in Illinois, she could not afterwards enforce a claim against her husband's estate based upon a denial of the jurisdiction of the Court whose aid she had herself invoked. Apparently the Court of Appeals has never passed upon the merits of this rule. The case of *In re Kimball*, 155 N. Y., 62, is quite similar on its facts to these two cases but the question is not touched upon in the decision. In the reports of the lower courts there are decisions both ways. The principle involved has found favor in a number of our states; as the Court in the *Swales* case suggests, it has many of the elements of estoppel; it certainly seems reasonable and likely to make for justice. Should the court of last resort accept this doctrine, the effect on our state divorce law will be material.

TORTS—PUBLIC CHARITY—HOSPITAL'S LIABILITY TO PATIENT.—What is the liability of a public hospital to a patient injured by the negligence of a nurse, in whose selection the hospital authorities have used due care? And, if there be none, on what theory of law is this immunity to be supported? The case of *Powers* v. *Massachusetts Homœopathic Hospital* (see RECENT DECISIONS, p. 495), holds that there is no liability, even though the patient make small payments for his treatment. The ground of the decision is that the rule *respondeat superior* has no application to such a case.